

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| Joint Application by SBC Communications |) | |
| Inc., Illinois Bell Telephone Company, |) | |
| Indiana Bell Telephone Company |) | |
| Incorporated, the Ohio Bell Telephone |) | WC Docket No. 03-167 |
| Company, Wisconsin Bell, Inc., and |) | |
| Southwestern Bell Communications |) | |
| Services, Inc. for Provision of In-Region, |) | |
| InterLATA Services in Illinois, Indiana, Ohio, |) | |
| and Wisconsin |) | |

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR'S
REPLY COMMENTS ON PETITIONERS' REQUEST FOR
INTERLATA AUTHORITY IN THE STATE OF INDIANA

The Indiana Office of Utility Consumer Counselor ("OUCC"), the statutory representative of Indiana ratepayers, consumers and the public pursuant to Ind. Code § 8-1-1.1-4.1, submits the following reply comments for the Federal Communications Commission's ("FCC's") consideration in this Section 271 review proceeding initiated by Indiana Bell Telephone Company, Incorporated, d/b/a SBC Indiana ("SBC-IN"), and various other SBC affiliates (referred to collectively herein as "SBC") under 47 § U.S.C. 271.

Although numerous parties have filed comments in this docket representing a number of interesting perspectives, the OUCC submits that the Federal Communications Commission ("FCC") should not be distracted from the fact that fundamental requirements for Section 271 approval remain unresolved. In its Initial

Comments, the OUCC identified those portions of SBC-IN's operations support system ("OSS") testing process that have yet to be completed and those areas where lingering problems persist and no reasonable resolution has been achieved.¹ For these reasons – and because SBC-IN itself agreed in writing to submit to such testing – the OUCC argued that it was premature to consider SBC-IN's request. The OUCC reasoned that it is difficult to draw the critical market-opening conclusions required under a Section 271 petition, especially when the underlying record and process show deficiencies. Notwithstanding, SBC-IN decided to press forward with its request, apparently believing and hoping to resolve the remaining deficiencies concurrently with the FCC's procedural process for reviewing Section 271(d)(1) applications. Irrespective of SBC-IN's motives or desires, the application process has now triggered the Section 271(d)(3) ninety-day clock and the FCC must consider the facts, circumstances and overall situation with which it is presented.

Under 47 U.S.C. § 271(d), Congress has placed the difficult task of determining whether the local marketplace is fully and irreversibly open to competition ultimately on the FCC's shoulders. This not-so-simple task to make the correct determination is further hampered because there is no simple, precise measure of whether a local exchange market is irreversibly open to competition. To aid the FCC in this crucial undertaking, Congress required the FCC to consult the state commissions and the Department of Justice ("DOJ").² Dockets were opened and processes agreed upon. As

¹ As discussed in more detail below, the same issues were also raised by the Indiana Utility Regulatory Commission and, in part, the United States Department of Justice and other parties to the SBC-IN proceeding in Cause No. 41657 that filed comments in this FCC docket on August 6, 2003.

² 47 U.S.C. § 271(d)(2)(A&B).

described below, the evidence collected in those state dockets indicates the processes are incomplete, and there remain important open issues with much at stake for all involved.

In addition to the OUCC's initial filing, reports submitted by Indiana utility regulators and federal investigators confirm that SBC-IN has not yet demonstrated compliance with Section 271 in Indiana. The Indiana Utility Regulatory Commission ("IURC") has presented the status and incomplete nature of the SBC-IN OSS testing process and, recognizing its own process would extend beyond the FCC's ninety (90) day review period under Section 271(d)(3), presented the IURC's comments, concerns, and issues for FCC consideration with the explicit reservation that the record before it was not sufficient to support all of the findings necessary to make its recommendation.³

The DOJ also recently filed its comments and independent, region-wide evaluation⁴ discussing serious lingering concerns that led to its decision not to support granting Section 271 authority to SBC in the four states covered by SBC's petition at this time based on the current record. Although the DOJ's evaluation discusses a number of concerns, it stressed SBC's continued wholesale billing problems, mechanical interface problems, and certain CLEC migration problems as its main

³ See, e.g., 8/6/03 Comments of the Indiana Utility Regulatory Commission. See also "Section 271" Report and Recommendation of the Indiana Utility Regulatory Commission to the Federal Communications Commission, also filed in this Docket at pp. 33-34, 149 (OSS testing & performance results), pp. 143-145 (data integrity, non-discrimination, and meaningful CLEC opportunity to compete), pp. 146-175 (discussion of commercial results on Checklist Items), pp. 75 and 159-160 (wholesale billing problems), pp. 102-103 and 169-170 (line splitting issues), p. 107 (shared transport), p. 137 (LNP cost recovery), p. 167 (change management requirements), pp. 197-199 (enforcement concerns), and pp. 199-200 (recommendations, including conditional recommendation on Section 271(c)(1)(a) findings due to pending SBC-IN appeals of IURC UNE tariff orders).

⁴ United States Department of Justice August 26, 2003 filing in this proceeding.

reasons for withholding support of SBC's request at this time.

The above concerns and issues raised by both the IURC and the DOJ certainly overlap with the concerns the OUCC raised in its August 6, 2003 Initial Comments wherein the OUCC submitted that the request by SBC-IN had been made prematurely. The OUCC echoes those comments and recommendations that incomplete processes and unresolved areas of concern need to be affirmatively and immediately addressed by SBC-IN.

Conclusion

The requirements Congress built into 47 U.S.C. § 271 are intended to ensure that an RBOC has irreversibly opened its markets to competition before the RBOC is given the opportunity to compete in the in-region, interLATA market. The processes and steps agreed upon by SBC-IN to help measure, determine, and ensure that the local marketplace is irreversibly open are at best incomplete. SBC-IN has failed to meet its burden of proof based on the record as it stands. Accordingly, under the ninety-day statutory process the OUCC – like the IURC and the DOJ generally – is left only to point out these deficiencies and note that the ongoing problems must be sufficiently addressed by SBC-IN before it properly should receive Section 271 approval.

By withholding approval until these issues are addressed, the FCC is in a unique position to ensure that SBC-IN gives top priority to resolving its long-standing wholesale service problems and finally achieving Section 271 compliance in Indiana. Only after SBC-IN's persistent OSS problems are resolved will Indiana CLECs be able to compete fairly and have a reasonable opportunity to gain a meaningful foothold in Indiana's local

exchange service market.

If healthy local service competition is to develop and survive in Indiana as envisioned by the Telecommunications Act of 1996, the Section 271(d) requirements must be followed closely and interpreted judiciously. Only then will consumers finally be able to reap the intended fruits of telephone competition in Indiana's local and toll service markets – namely, a greater variety of available telecommunication services and service packages at fair, reasonable, and competitive rates. Unfortunately, absent the completion of ongoing state assessment processes and recommendations to which SBC-IN itself agreed, the long-sought goal of bringing full competition to Indiana's telephone markets may rest on no more than hollow promises.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that an electronic copy of the foregoing **Indiana Office of Utility Consumer Counselor's Reply Comments on Petitioners' Request for InterLATA Authority in the State of Indiana** has been filed with the Federal Communications Commission using the Commission's Electronic Comment Filing System (ECFS) on August 29, 2003. This will also certify that electronic copies of the foregoing comments were also served via e-mail on the following individuals, in conformance with the Commission's July 17, 2003 published request for comments:

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